

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)	
)	
)	
Schools and Libraries)	WC Docket No. 02-6
Universal Service Support Mechanism)	
)	
Request for Waiver by)	Application No. 171013209
Santa Fe Public Schools)	
of the Commission's Rules)	

**REQUEST FOR WAIVER OF
SERVICE IMPLEMENTATION DEADLINE
FOR FUNDING YEAR 2017**

Pursuant to section 54.719(c) of the Commission's rules, the Santa Fe Public Schools (SFPS, Santa Fe, or the District) hereby respectfully requests a waiver of section 54.507 of the Commission's rules for the above-referenced application. For the reasons set forth below, we request that the Wireline Competition Bureau (Bureau) grant this waiver request, and any other waivers necessary, to allow Santa Fe an additional six months to complete installation and to receive its committed E-rate funding.

I. BACKGROUND

Santa Fe Public Schools is a school district based in Santa Fe, New Mexico. It serves all of Santa Fe County which spans 1,911 square miles. It is the fifth largest school district in New Mexico and has approximately 13,000 students. There are 28 schools in the district and multiple non-instructional facilities.

Historically, Santa Fe Public Schools lacked competition when seeking bids for its wide area network (WAN) services and the prices were prohibitive in order to meet the increased demand by staff and students and to meet the FCC's bandwidth goals.

On December 21, 2016, SFPS sought bids for telecommunications access services with the goal of increasing the bandwidth for its schools and reducing its costs. Santa Fe received bids for leased lit and leased dark fiber from seven different vendors offering solutions that varied in terms.

The District awarded a contract to Conterra Ultra Broadband LLC Networks (Conterra) for leased lit fiber because it submitted a comprehensive bid for the District's schools and because it was the least expensive solution. The bid included a special construction charge of \$4.68 million to deploy fiber to the District's schools. The service also included a monthly recurring charge (MRC) of \$649 per circuit for 10 Gbps of WAN connectivity. The price offered by Conterra was significantly less than the price offered by all other bidders, including the incumbent provider. Over a 20-year period the estimated cost from Conterra is over 50% less than the incumbent carrier and almost 15% lower than the next lowest bid.

For Funding Year 2017, SFPS submitted FCC Form 471 # 171013209, requesting E-rate funding for WAN services, including special construction charges.¹ USAC issued a funding commitment on December 1, 2017 almost six months after the application was submitted. Given the scope of the project, neither the district nor Conterra were willing to begin construction until a positive funding decision was issued. Due to the immense size of project, which included the installation of more than 42 miles of fiber, it was clear that the work could not be completed by June 30, 2018.

SFPS timely submitted an FCC Form 500 91458 to request an extension of the service implementation deadline and received an extension from USAC until June 30, 2019.² The district, the vendor, and the State of New Mexico has done everything in its power to complete the

¹ Exhibit 1, FCC Form 471.

² Exhibit 2, Revised FCDL Extending Service Delivery Deadline

connections of the 28 distinct circuits by June 30, 2019. Despite these efforts it appears there will be a few sites that will not be lit by June 30, 2019.

As of this writing xx of 28 circuits have been lit and by June 30, 2019 and it is expected that 25 circuits will be lit. There are many factors that have led to the fiber project being delayed beyond June 30, 2019. Below is a high-level list of the reasons which will be discussed in more detail.

- A late FCDL from USAC
- Archeological Review Committee approval process that delayed the installation
- Power New Mexico (PNM) delays in approving permit and process limitations.
- Delays in Department of Transportation (DOT) approval of rights of way.
- Two remote schools that are each over ten miles from the district data center.

A late FCDL by USAC clearly impacted the vendor's ability to complete the work by June 30, 2018 and, subsequently June 30, 2019, Based on a FDCL date of December 1, 2017, the vendor had less than 19 months to lay over 42 miles of fiber optic cable, including the one-year service delivery extension USAC granted FCC rules initially allow an applicant up to 18 months to complete special construction projects, (January 1st prior to the start of the funding year to June 30th of the year). If USAC approves a one-year extension, an applicant is allowed up to 30 months to complete a special construction project. The truncated time the District had to complete this project was one of the major obstacles to completing the project by June 30, 2019.

Conterra was required to get approval from the Santa Fe Archeological Committee (ARC) of the proposed fiber path before any construction work could begin. Conterra knew this was

required but did not expect it would take the hiring of multiple architectural firms and four ARC meetings, held monthly, to get approval to move forward with the project. The largest impact on the construction project arose out of Santa Fe's historic district.

A large majority of the buildings in the historic district over 50 years old are considered by the ARC to either be a contributing structure or a significant structure. The ARC requires that an archeologist be present for all construction projects in a historic area to ensure if any items of historic importance are discovered, such as Native American and early Spanish Settlers artifacts, they are properly preserved. Should any items of historic importance be found, any construction must be halted and could require a rerouting of the fiber plant. While this did not occur on this project, the requirement to have an archeologist present did provide scheduling challenges that led to additional delays.

The process Power of New Mexico (PNM) administers to approve permit requests presented an additional challenge. This project involved more than 59 permits with PNM, multiple permits from the City of Santa Fe, and two railroad permits, so Conterra consistently had to manage the pipeline to ensure that new permits were submitted as other permits were approved. While managing permits alone was a challenge, the issue was further compounded by delays in the approval of permits from PNM. In some cases, permits took as long as 52 weeks to be approved. The vendor ultimately had to get the State involved and their legal counsel to ensure permits were approved in a timely manner.

In order to keep costs low Conterra, when possible, leveraged existing conduit in which to pull new fiber. The leveraged conduit, that belonged to a different vendor involved a critical segment of the build which was required as part of the network backbone. One section of the build required roughly 100 feet of fiber crossing a railroad track and there were significant delays caused

by the Department of Transportation (DOT) that impacted the build and diverted resources from laying the fiber. A contributing factor was staffing issues at the DOT; the DOT only had one employee, who was already overextended, available to assist with resolving this issue.

Conterra worked with the DOT and vendor to complete the numerous obstacles required to gain the Right of Way (ROW). This was a significant cause of delays and the permit was finally approved on June 25, 2019. This permit delayed the lighting of all schools west of the railroad crossing. Additionally, there were several other areas of the project where significant work with the DOT was required to receive the appropriate ROW. The vendor understood there would be multiple challenges, but it was not reasonable to expect such an elongated process.

While the majority of schools are located inside the city limits of Santa Fe, three schools, Carlos Gilbert, Tesuque and El Dorado are six, ten and 17 miles from the district data center. These three schools were not completed by June 30 because of the challenges associated with the lengthy build and the necessity to work with the respective Villages.

Any one of these reasons justifies a waiver of the Service Delivery Deadline. However, when all of these factors are taken into consideration, it is surprising Conterra has complete construction and lit as many of the locations as they have. The district and Conterra did plan appropriately to complete installation by June 30, 2019, but unfortunately circumstances beyond control of either party necessitates a second service delivery extension.

Because some of the Rights of Way and permitting have not yet been completed the district is requesting an additional six months (December 31, 2019) to light the remaining locations. The district is hopeful all sites they will be lit sooner as they are currently out of contract with their incumbent provider and paying significantly higher month-to-month rates for WAN service. It is

likely that some, if not most, of these sites will be lit by the end of July but given the number of factors outside of Conterra's control we, six months is an appropriate amount of time to complete the project.

II. A WAIVER OF THE COMMISSION'S SERVICE INSTALLATION DEADLINE IS IN THE PUBLIC INTEREST

Santa Fe Public Schools respectfully requests a waiver of the Commission's rules in order to complete its fiber project. First, Santa Fe's project was "unavoidably delayed due to weather or other reasons" outside of its control.³ Second, SFPS satisfies the criteria established by the Commission for extensions of the deadline for non-recurring services. Finally, granting this waiver will serve the public interest and will help to achieve the goals of the E-rate program by bringing affordable broadband to students in the Santa Fe area.

Any of the Commission's rules may be waived if good cause is shown.⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁶

In the *2014 Second E-Rate Order*, the Commission expanded the high-speed broadband options available to applicants by equalizing the treatment of leased lit and leased dark fiber networks under the E-Rate program, which included making special construction of leased dark

³ FCC 14-189, para. 49; DA 18-473.

⁴ 47 C.F.R. § 1.3.

⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

fiber and self-provisioned networks eligible for support.⁷ Specifically, applicants may only receive E-Rate discounts for special construction charges related to leased lit or dark fiber if the fiber is lit by the end of the funding year (i.e., June 30).⁸ Applicants may obtain a one-year extension of the June 30 deadline to complete special construction and light the fiber, or use a self-provisioned network, if they demonstrate that construction was “unavoidably delayed due to weather or other reasons.”⁹

When applicants have received that one-year extension from USAC and still need additional time, they have sought a waiver of the rules from the Commission. In addressing requests for waiver of the special construction service delivery deadline, the Bureau reviewed applicants’ special circumstances.¹⁰ In the context of the service implementation deadline applicable to other non-recurring services, the Bureau has issued waivers when (1) the applicant was unable to complete implementation for reasons beyond the service provider’s control, and (2) the petitioner made good faith efforts to comply with Commission rules and procedures.¹¹

⁷ *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15555, 15558, ¶¶ 36, 43 (2014) (*2014 Second E-Rate Order*).

⁸ See 47 CFR § 54.507(d)(1) (stating that a recurring service must be used within the funding year for which discounts are sought to be eligible for support); see also *2014 Second E-Rate Order*, 29 FCC Rcd at 15555, 15560, ¶¶ 37, 49.

⁹ *Id.* at 15555-56, 15560, ¶¶ 38, 49.

¹⁰ *2017 Jemez Waiver Order*, 32 FCC Rcd at 10242-43, ¶ 7 (the Bureau concluded that the criteria for waiving the extension request deadline applicable to other non-recurring services “appropriately describe, at a high-level, the special circumstances that warrant a waiver of the deadline to extend the special construction implementation deadline.”); *Requests for Waiver by Grants/Cibola County School District and Jemez Pueblo Tribal Consortium, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, DA 18-1060 (WCB 2018) (*Grants/Cibola Waiver Order*).

¹¹ *Requests for Review/Waiver of the Decision of the Universal Service Administrator by Accelerated Charter*, CC Docket No. 02-6, Order, 29 FCC Rcd 13652, 13652-53, ¶ 2 (WCB 2014) (*Accelerated Charter Order*) (granting a waiver of the service delivery deadline for non-recurring services when petitioners were unable to complete implementation on time for reasons beyond the service providers’ control).

Specifically, the Bureau has granted waivers when the applicants received their funding commitments late or when USAC initially denied the funding requests.¹² The Bureau has also granted extension waivers due to the difficulty of obtaining the necessary permits from various federal, state and local governmental agencies.¹³ In Grants/Cibola, the Jemez Pueblo Consortium's service provider had to halt construction due to a state DOT requirement and then reapply for permits—a three-month delay.¹⁴ Finally, the Bureau has also noted the complexity of the builds and the short construction season as reasons to extend the deadline.¹⁵

The District meets these standards. First, the delays were unavoidable and unforeseeable. Neither the District nor Conterra took any action that would have contributed to the delays they experienced in obtaining the necessary governmental authorizations to move forward. All of the permits were required for Conterra to build and install the facilities.

Second, all of the delays described above were outside of the control of Conterra. Conterra has done everything within its control to obtain the necessary permits from the various entities, as required by local, state and federal law. The PNM process for permitting pole attachments and resulting delay was outside of Conterra's (and the District's) control. The delays in obtaining various permits from DOT, including but not limited to railroad crossings, were not caused by Conterra nor the district. Any one of these reasons justifies a waiver of the Service Delivery Deadline, however when all of these factors are taken into consideration, it is surprising Conterra has completed construction and lit as many of the locations as they have.

¹² *Request for Waiver by Utah Education and Telehealth Network, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 18-473 at ¶ 10 (WCB 2018).

¹³ *Grants/Cibola Waiver Order* at ¶ 5.

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 11.

Third, the District and Conterra not only made good faith efforts to complete the project but went above and beyond to finish the fiber build. For example, as described above, Conterra worked diligently for months with the ARC to obtain approval to move forward with the project. Conterra worked with the state DOT and PNM to obtain permits that in some cases took a full year to be approved. Conterra even changed its fiber facilities, at its own expense, to move some of the build to underground instead of aerial, to mitigate the effect of PNM's pole attachment permitting process. For these reasons, the Commission should grant the waiver and allow the District an extension of time so that Conterra can complete the project.

Because some of the Rights of Way and permitting have not yet been granted, the District is requesting an additional six months after the grant of this waiver request to light the remaining locations. The district is hopeful all sites will be lit sooner, as they are currently out of contract with their incumbent provider and paying significantly higher month-to-month rates for WAN service. The District's request for a six-month extension is also consistent with prior Bureau precedent. The Bureau granted UETN two additional years to complete its project, given the unique challenges involved in the construction. Grants/Cibola was given an additional 18 months and the Consortium was given one additional month. The District's request is proportionate to the extensions granted to those projects.

Second, the grant of a waiver here would be consistent with the Commission's service extension rule for non-recurring services.¹⁶ The rule allows an extension to be granted if the applicant satisfies one of four criteria.¹⁷ One of those criteria are relevant to Santa Fe:

¹⁶ 47 C.F.R. § 54.507(4).

¹⁷ *Id.*

- The applicant's service provider is unable to complete implementation for reasons beyond the service provider's control

The inclusion of these rationales in the Commission's rule demonstrates the Commission believes they serve as reasonable justifications for a delay in installation of services. SFPS meets the criteria defined in the FCC rules. Completion of the project was delayed for reason beyond the control of Conterra.

Finally, strict application of the rule in this instance would not be in the public interest. Denial of this waiver would significantly impact the district's ability to provide adequate bandwidth, at a reasonable cost, to some of its more rural students.

SFPS believes that denying E-rate funding under these circumstances would be unjust, and that waiving the rule to the extent necessary would be efficient and consistent with the public interest. As such, SFPS respectfully argues that a waiver of the Commission rules is in the public interest.

III. CONCLUSION

For the foregoing reasons, the Bureau should grant Santa Fe's request for waiver. The Bureau should also grant a waiver of any other rules, such as the invoicing deadline rules, necessary to allow Santa Fe an additional six months to complete the fiber installation and to utilize its funding commitment.

Respectfully submitted,

